

ESTATE OF GEI-KAUN-MAH (BERT)

IBIA 76-1

Decided August 20, 1975

Petition for Extension of Time to File Notice of Appeal.

Dismissed.

1. Indian Probate: Appeal: Extension of Time for Filing

That part of 43 CFR 4.22(f)(1) that precludes extensions of time for filing notices of appeal is jurisdictional from which there is no further administrative appeal or remedy.

APPEARANCES: Robert T. Keel, Esq., for Petitioners Juanita Geikaunmah Mannedate, Imogene Geikaunmah Carter, and Blossom Geikaunmah Dupoint.

OPINION BY ADMINISTRATIVE LAW JUDGE WILSON

A petition for extension of time to file notice of appeal has been filed in the above-entitled matter by Juanita Geikaunmah Mannedate,

Imogene Geikaunmah Carter, and Blossom Geikaunmah Dupoint through their attorney, Robert T. Keel. The petition, copy of which is attached, and made a part hereof, together with the probate record was received by this Board on July 3, 1975.

The petition is in effect an appeal from a decision issued by Administrative Law Judge Jack M. Short denying a similar petition for the reason that 43 CFR 4.22(f)(1) precluded the granting of an extension of time for filing a notice of appeal. The Judge in addition thereto, gave the following grounds for the denial:

Petitioners for the extension of time to file a notice of appeal were among the petitioners for rehearing; they were represented on their petition for rehearing by competent legal counsel; and, that they had ample time to file a notice of appeal before the decision denying their petition for rehearing became final.

Regulations regarding extensions of time for filing documents appear at 43 CFR 4.22(f)(1). Pertinent parts thereof provide:

The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation. (Emphasis supplied.)

[1] Clearly, the underlined portion of the above-quoted regulation, supra, is jurisdictional from which there is no further

administrative appeal or remedy. Accordingly, this Board acting for the Secretary under delegated authority in probate matters is without jurisdiction to grant the petitioner's request and, therefore the petition must be DISMISSED.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for extension of time for filing notice of appeal filed by the petitioners through their attorney be and the same is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge

Attachment

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals

In the Estate of GEI-KAUN-MAH (BERT),
Deceased Kiowa Allottee No. 2571.

IP TU 42P 73
IP TU 152P 75

PETITION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

Comes now Robert T. Keel, counsel for Juanita Geikaunmah Mannedate, Imogene Geikaunmah Carter, and Blossom Geikaunmah Dupoint, interested parties, and requests the Board of Indian Appeals for an extension of time in which to file a Notice of Appeal in the above-entitled cause and in support of said Petition states:

1. That petitioners changed attorneys and were not aware that the decision became final on June 3, 1975.
2. That counsel did not receive the file in his office until June 3, 1975, the date the decision became final, and that he was out of the State all of that week and had no opportunity to see the file until he returned to his office on June 9, 1975, and did not have the opportunity to file a timely Notice of Appeal;
3. That counsel believes the above interested parties have sufficient evidence for an appeal.
4. That a Petition for Extension of Time was denied by the Honorable Jack M. Short, Administrative Law Judge on July 2, 1975.

WHEREFORE, Robert T. Keel, counsel for Juanita Geikaunmah Mammedaty, Imogene Geikaunmah Carter, and Blossom Geikat;nmah Dupoint, interested parties, requests the Board of Indian Appeals for an extension of time in which to file an appeal in the above-entitled cause.

Dated this 10th day of July, 1975

Robert T. Keel
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232-8419